

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3260 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SCHUTZ ENGINEERS PVT LTD

Versus

G I D C GOVT OF GUJARAT UNDERTAKING

Appearance:

Mrs.M.R.Bhatt appearing for Senior Advocate

MR RP BHATT for Petitioner MR Nikhil Kariel appearing for
Senior Advocate

MR BP TANNA for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/02/2000

ORAL JUDGEMENT

The present petition is filed by Schutz Engineers
Pvt.Ltd., a company incorporated under the Companies Act
and having its registered office at Outside Delhi

Darwaza, Shahibaug Road, Ahmedabad - 4 through its Director Shri Bipin V Patel against the respondent Gujarat Industrial Development Corporation (GIDC) Mahesana, a Government of Gujarat Undertaking. According to the case of the petitioner, the petitioner company was originally a partnership concern in the name and style of M/s. Schutz Engineers. Shri Bipin V Patel was one of the partners. Shri B.V.Patel had made an application on 7.4.983 to the GIDC, Mahesana for allotment of plot at Kalol Industrial Estate. Shri B.V.Patel was also the Director of another Pvt.Ltd. company known as Schutz Outarc Pvt.Ltd. having its factory at 43-2, GIDC Estate, Kalol & therefore one application was filed before the GIDC for allotting another plot at Kalol Industrial Estate so as to expand the existing business/factory. The respondent Corporation, Mahesana by letter dated 14/15-2-1984 offered the plot no.1/12 at Kalol Industrial Estate for a total price of Rs.200513/-. According to the said letter of offer, Shri Patel was required to make payment of Rs.40103/- being 20% of the total price of the plot inclusive of frontage charges. It was further informed by the respondent Corporation to the petitioner that the Corporation was pleased to offer plot no.1/12 at Kalol Industrial Estate on out of turn priority basis for expansion of the existing unit. It was requested by the Corporation to produce No Due Certificate duly obtained from the Audit Officer, Mahesana sitting at Ashram Road, Ahmedabad and if any proposed partnership is there then a deed of partnership may be furnished to the Corporation. The sister concern Schutz Outarc Pvt.Ltd. having plot no.43/2 at GIDC Estate requesting to the Audit Officer to issue No Due Certificate so as to enable the company to present the same before GIDC by letter dated 23.2.1984. Shri B.V.Patel pointed out by letter dated 12.3.84 that he has not received any reply from the Audit Officer with regard to No Due Certificate though he showed his willingness to deposit the amount of Rs.40103/- being 20% of the amount as mentioned in the offer letter. He also requested to advise the Audit Officer to grant No Due Certificate and mean time the offer may be extended. In the said letter it was also pointed out by Mr.Patel that they have decided to go for a private limited company in the name of Schutz Engineers Pvt.Ltd. for which an application has been made to the Registrar of Companies for acceptance of the propose name & at the time of remitting the offer money they will submit the Articles of Association and Memorandum of Association of the proposed company. The respondent Corporation by letter dated 19.3.1984 informed to the petitioner that since No Due Certificate could not be obtained from the Audit Officer, the same may be produced when it was received

and also requested to produce the partnership deed or Articles of Association may also be submitted at a later date. Mr.B.V.Patel by letter dated 30.3.84 pointed out that amount of Rs.40103/- by demand draft dated 30.3.84 was forwarded as required and Registrar of Companies has approved the name of Schutz Engineers Pvt.Ltd. and therefore the request was made to the Corporation that new allotment letter may be issued in the name of the petitioner company which has its registered office Outside Delhi Darwaza, Shahibaug Road, Ahmedabad - 4. In the said letter, it was also mentioned that Audit Officer was being pursued to issue No Due Certificate. The Respondent Corporation by letter dated 27.4.84, Senior Officer, GIDC, Mahesana forwarded the stamp receipt for Rs.40103/- paid by the petitioner company and in the said letter it was mentioned that allotment letter of plot no.1/12 was ready but due to non-receipt of No Due Certificate in respect of the existing Unit, the same could not be sent. In reply to the said letter Mr.Patel by letter dated 9.5.1984 mentioned that personal visit was made at the Office of the Audit Officer on 7/8.5.84 and Audit Officer was requested to make arrangements to locate the missing papers at his end and recalculate the dues upto date and to grant necessary certificate so as to produce the same before GIDC as required. The Audit Officer by letter dated 14.5.84 advised to M/s.Schutz Outarc Pvt.Ltd. i.e. existing unit to make payment of Rs.5630/- as stated in the said letter. The Respondent Corporation by letter dated 3.12.1984, Senior Officer, GIDC, Mahesana has mentioned that before allotment of another plot was finalised it was necessary to have the outstanding dues cleared by the existing unit and due to non-submission of No Objection Certificate for allotment of plot no.1/12 at Kalol could not be finalised and it was requested to the petitioner by the Corporation to furnish as early as possible NO Due Certificate. Shri B.V.Patel by letter dated 8.12.84 mentioned to the Corporation that he will do the needful as early as possible but because he was out of India for about 3 months, the matter was not attended by him. Thereafter by letter dated 24.9.85 of M/s. Schutz Outarc Pvt.Ltd. mentioned that full and final payment in respect of the said unit no.43/2 was made and nothing was outstanding and it was also pointed out that since all the dues in respect of existing units were paid and amount of 20% of another plot i.e. Rs.40103/- was paid and immediate action is required for allotment of the plot. M/s. Schutz Outarc Pvt.Ltd. by letter dated 23.11.85 mentioned that since all the dues have already been cleared, the necessary allotment letter against lot no.1/12 at Kalol may be issued and by letter dated

18.4.86 it was also mentioned that to issue the allotment letter in respect to plot no.1/12 immediately on receipt of the said letter. Again the request was made by letter dated 5.5.86, 27.5.86, 1.8.86, 16.8.86 and thereafter various reminder letters from 30.8.86 to 27.8.87 were written by the petitioner to the Respondent Corporation. The said averments have been made in para 12 of the petition. By letter dated 17.9.87 addressed to the Regional Manager, Mahesana, it was mentioned by the petitioner that meetings are held with him on 14.9.87 and where it was mentioned that though several letters were written no reply was received from GIDC and such attitude of the Corporation could not be appreciated. The Respondent Corporation by letter dated 14.12.1987 informed to the petitioner Shri B.V.Patel to supply the copy of the partnership deed and No Due Certificate from the Audit Officer, GIDC, Mahesana for said number 43/2 failing which the case will be treated as closed. In reply to the said letter Shri B.V.Patel has recorded that under letter dated 12.3.84 and informed to the GIDC, Mahesana with the intention to change the constitution from partnership to private limited company and he was also informed of the formation of the company and amount of Rs.40103/- was received by the Corporation from the company and Corporation had issued a receipt also in the name of the petitioner company that was formed. It was also submitted by Mr.Patel that since the Corporation had accepted the money from the private limited company, there was no need for forwarding the copy of the partnership deed. By letter dated 21.4.88 Shri B.V.Patel informed to the Corporation that since the case was almost about 4 years old, necessary allotment may be issued in favour of the petitioner company immediately. Thereafter Shri B.V.Patel received letter from the respondent Corporation dated 30/31.5.88 interalia pointed out that the allotment letter can be issued in favour of the petitioner on the terms and conditions recorded therein. It is also further mentioned that the petitioner should pay Transfer Fee at the rate of 10% on the current allotment price i.e. Rs.37596/- and petitioner should obtain certificate about the status of utilisation in respect of the existing unit and produce No Due Certificate and also submit No Objection Certificate from the Gujarat Pollution Control Board & make available Provisional SSI Registration Number and also produce the Articles of Association and Memorandum of Association of both the companies and pay an amount of Rs. 7519/- for non-utilisation of plot no.1/12. The said order dated 30/31.5.88 issued by the Respondent Corporation has been produced at Annexure S to the petition Page 82. In response to the said letter, the

petitioner has wrote a letter dated 13.6.1988 and informed to the GIDC that the petitioner had complied with all the requirements and the allotment of plot was delayed for no fault of the petitioner and also informed GIDC in the initial stage that the petitioner wanted to form a Private Limited company and the allotment was to be made in the name of Private Limited company and said request was accepted and therefore now there was no question of any transfer of plot and transfer fees was not required to be made. The plot was not utilised since the allotment letter itself was not given and therefore the question of paying any penalty did not arise and in respect to other conditions same shall be complied as early as possible. Thereafter, the respondent Corporation by letter dated 21/22.6.88 by the Regional Manager, GIDC asked the petitioner to comply with the terms and conditions contained in the letter dated 30/31.5.88 within 10 days failing which the offer dated 15.2.84 would be revoked. According to the petitioner, the Respondent Corporation is a State within the meaning of Article 12 of the Constitution of India and acted arbitrary and in an unreasonable manner. Therefore, the said order dated 30/31.5.88 (Annexure S) to the petition has been challenged by the petitioner Corporation and respective prayer has been made in Para 26-A of the petition.

2. Initially in this matter, this Court has issued Notice returnable on 11.7.88 and thereafter the amendment was sought for and same was carried out by the Learned Advocate on behalf of the petitioner in the petition and said amendment was allowed as Para 26 (D1). Thereafter the said petition wherein rule has been issued and interim relief in terms of Para 26 (D1) has been granted by this Court on 30.12.88. The relevant prayer D1 is as under:-

"D1. By way of ad-interim order this Hon'ble Court may be pleased to direct the respondents to hand over the possession of Plot No.1/12 at G.I.D.C. Estate, Kalol without insisting on transfer fee, interest and penalty as demanded under letter dated 30/31.5.88."

The said interim relief has been granted by this Court in respect to the possession of Plot No.1/12 at GIDC Estate, Kalol. The respondent Corporation has filed affidavit in reply by Shri Nayan Raval, Regional Manager, GIDC, Mahesana on 23.8.88 and alongwith the said reply Annexure 1 & 2 are produced by the Respondent

Corporation.

3. The contention of the petitioner is that by letter dated 30/ 31.5.88 of the respondent Corporation demanding the transfer fee and penalty for non-utilisation of the plot is clearly not tenable on the facts of the present case. According to the petitioner, they complied with all other requirements and whatever legal requirements are to be complied with the petitioner is ready and willing to do. It was also a contention raised by the petitioner that this is not a case of transfer of ownership and therefore the question of payment of transfer fee does not arise and when the petitioner was not being allotted the plot in question then paying penalty for non-utilisation and interest does not arise. On the fact of the case, the requirement at issue no.5 and issue no.8 of the said letter dated 30/31.5.88 cannot be complied with and as per the terms and conditions of the offer, the petitioner company has already made payment of 20% of the amount of Rs.40103/on March 30, 1984 by the petitioner company and Respondent Corporation has issued the stamp receipt in favour of the petitioner company. Now the allotment of the plot is to be made in the name of the petitioner company and therefore on fact of it, there is no transfer and question of making payment of transfer fees does not arise. It was also further contended by the petitioner that the petitioner was only required to pay 20% of the amount as required which has been paid as far back as on 30.3.84 and all dues concerned i.e. Schutz Outarc Pvt.Ltd.have been paid and No Due Certificate has also been furnished since long. All the legal requirements have been complied with and therefore petitioner is entitled to allotment of Plot no.1/12 at Kalol, GIDC Estate. Therefore, according to the petitioner, the aid order 30/31.5.88 (Annexure S to the petition) passed by the Respondent Corporation is illegal, null and void and the same is required to be quashed and set aside.

4. The Respondent Corporation has filed the reply.

In Para 3 it was contended by the Respondent Corporation on the facts of the present case it cannot be disputed by the present petitioner that the application was made by one Shri B.V.Patel in April 1983 and in the application the name of the application was shown as B.V.Patel, B.Sc., M.B.A (USA) in Clause 2 Part 1. Regarding constitution it was pointed out that partnership firm would be constituted and partnership deed would be entered into after a plot or shed will be allotted to said Shri B.V.Patel. Therefore, the contention of the respondent Corporation is that the applicant was an

individual and letter was addressed to Shri B.V.Patel which is at Annexure A to the petition made it clear. The Corporation further pointed out in the reply that it is pertinent to note that Annexure S order dated 30/31.5.88 which is impugned order addressed to Bipin V Patel and therefore there can be no doubt in the mind of anyone that Shri B.V.Patel who was the applicant and wanted the partnership is now replaced by the present petitioner Schutz Engineers Pvt.Ltd. which is admittedly a Private Limited Company. In the eye of Law an individual firm and company are separate entities. It is further pointed out by the Respondent Corporation that if the conditions are laid down in accordance with the policy of the Corporation, it is difficult to understand what objection can be there for paying the necessary amount since the Pvt.Ltd. Company was never the applicant. The policy of the Corporation must be policy in all cases similarly and no exception can be made by the Corporation since the petitioner is a Pvt.Ltd. Company and was never the applicant before the G.I.D.C. It is necessary to point out at this stage that at earlier stage, the policy of the Corporation was to permit the transfer from individual to firm or private limited company provided share of the person who made an application was controlling more than 50% i.e. 51% or more. It is necessary to point out at this stage that in July 1986 it was decided not to apply that policy and charge proper transfer fees as per the category. The change of the policy which was made in the end of 1985 was by the then Chief Executive Officer of the Corporation and said policy was produced by the Corporation (Annexure 2) to the reply. Therefore, lastly it was contended by the Corporation that now it is not open for the Corporation to change the name as desired by the petitioner without necessary payments as required under law. Annexure 1 to the reply is the application submitted by Shri B.V.Patel dated 5.4.83 to the G.I.D.C, Mahesana.

5. Learned Advocate Mrs.Bhatt appearing on behalf of Senior Advocate Mr.R.P.Bhatt for the petitioner has pointed out that No Due Certificate has been issued by the Audit Officer dated 22.12.87 in favour of Schutz Outarc Pvt.Ltd. and same was produced before the Respondent Corporation. Learned Advocate Mrs.Bhatt has read almost all the correspondence between the petitioner Shri B.V.Patel and Respondent Corporation which are on record from Page 18 to 92. The important letter dated 30.3.1984 of Shri B.V.Patel addressed to Sr.Officer of GIDC wherein it is mentioned by Shri Patel that they received the approval from the Registrar of Companies,

Gujarat for the name of Schutz Engineers Pvt.Ltd. and therefore the request was made to allot the plot & send the allotment letter in the name of Schutz Engineers Pvt.Ltd. at its Registered Office, Outside Delhi Darwaza, Shahibaug Road, Ahmedabad - 4. Thereafter the Respondent Corporation has received 20% amount of Rs.40103/- from the petitioner company and receipt has been given by the Respondent Corporation dated 5.4.1984 in the name of the petitioner company in respect to plot no.1/12 at Kalol GIDC. In the said receipt it is specifically mentioned that said payment is against being offer amount of plot no.1/12 at Kalol Industrial Estate and Receipt is No. 20155 produced on Page 72 of the petition. The said amount of Rs.40103/has been paid by the petitioner company by Demand Draft No. 16581 dated 30.3.84 and same has been accepted by the Respondent Corporation. Shri B.V.Patel has produced No Due Certificate for the said number A-1 43/2 at Kalol to the respondeat Corporation by letter dated 22.12.87 and requested to the Respondent Corporation to issue allotment letter for plot no.1/12 at GIDC Kalol in favour of the petitioner company without any further delay. Therefore, the submission has been made by Mrs.Bhatt that once the Corporation has accepted the amount from the petitioner company and issued the receipt in the name of the petitioner company than there is no question of transfer and also no question of paying penalty or interest as demanded by the respondent Corporation by letter dated 30/31.5.88 Annexure S (Page 82). Therefore the said order of the respondent Corporation is illegal, null and void and arbitrary.

6. Learned Advocate Shri Nikhil Kariel on behalf of Senior Advocate Mr.B.P.Tanna for the respondent Corporation has pointed out that initially the application was made as an individual by Shri B.V.Patel and thereafter the allotment by the Corporation is also made in favour of the individual and thereafter the said change has been made by the petitioner and therefore petitioner ought to have paid transfer fee at the rate of 10% of the current market price and also required to pay the penalty for non-utilisation of the plot as directed in the impugned order dated 30/31.5.88. The Respondent Corporation according to their policy has rightly and legally issued the said order which is legal and valid and there is no arbitrary action taken by the respondent Corporation and therefore the present petition is required to be dismissed.

7. After considering the submissions of both the advocates and also after perusing the entire

correspondence produced on record by the petitioner as well as the reply filed by the Respondent Corporation and also considering the policy framed by the Respondent Corporation. The facts remain that the Respondent Corporation by letter dated 14.2.84 has accepted the application filed by one Shri B.V.Patel and offered the plot no.1/12 to the individual. But it is also required to be noted that Annexure-B Page 20 letter dated 14/15.2.84 is letter of Sr.Officer of GIDC, Mahesana addressed to Shri B.V.Patel informing Shri Patel that the Corporation has considered the case of allotment of plot no.1/12 at Kalol Industrial Estate on out of turn priority basis for expansion of the existing Unit. The only requirement as suggested in the said letter that party should have to clear all the outstanding dues of the Corporation towards existing unit before finalisation of such type of allotment. Except that there is no other condition has been mentioned in the letter dated 14/15.2.84. In the said letter, there is no other policy pointed out by the Respondent Corporation. Annexure D Page 22 is a letter of Shri B.V.Patel addressed to Sr.Officer, GIDC wherein the said letter is pointed out by Shri Patel that as regards the submission of partnership deed copy it is informed by Shri Patel to the Corporation that now they have decided to go for Private Limited Company in the name of Schutz Engineers Pvt.Ltd. for which they have already applied for the Registrar of Companies Office for acceptance of the proposed name and at the time of remitting the offer money, they will submit Articles of Association and Memorandum of Association of the proposed company. The respondent Corporation by letter dated 19.3.84 addressed to Schutz Outarc Pvt.Ltd. wherein it is pointed out that please manage to make the payment of the offer money of Plot No. 1/12 which is offered to you within a period of 7 days on receipt of this letter and also produce No Due Certificate. It is also mentioned in the said letter that in respect to the copy of the partnership deed or Articles of Association same can be produced late till the same is ready at your end. Thereafter letter dated 30.3.84 (Annexure E) Page 24 was written by Shri B.V.Patel, Managing Director to Sr. Officer, GIDC and in the said letter it is specifically mentioned that by Demand Draft bearing No. 016581 dated 30.3.84 of Rs.40103/- drawn on State Bank of India, Mahesana in favour of GIDC and it is also informed that they have received the approval from the Registrar of Companies, Gujarat for the name of Schutz Engineers Pvt.Ltd. and therefore the request was made that kindly issue the allotment letter for the above mentioned plot in the name of Schutz Engineers Pvt.Ltd. with its Registered Office

Outside Delhi Darwaza, Shahibaug Road, Ahmedabad - 4 and Articles of Association and Memorandum of Association will be sent to you in due course as agreed by GIDC. Now this letter (Annexure F Page 24 to the petition) is from Shri B.V.Patel wherein, he being the Managing Director has informed to the Sr.Officer of GIDC that now the said amount of Rs.40103/- has been paid by Demand Draft by Schutz Engineers Pvt.Ltd. and the request was made to issue allotment letter in favour of the petitioner company. The said letter has been received by the respondent Corporation. The said demand draft mentioned in the letter is also received by the Respondent Corporation from the petitioner company. Not only that but the Respondent Corporation has issued a receipt in favour of the petitioner company Page 72 of the said petition dated 5.4.84. Now it is also required to consider that upto that date letter dated 30.3.84 by Shri B.V.Patel, amount has been accepted by the Respondent Corporation in the name of the company and on behalf of the company & receipt has been issued (Page 72) by the Respondent Corporation in the name of the company. Thereafter, the respondent Corporation has never objected the said transaction or change which has come into effect and accepted by the respondent Corporation. But subsequently, the respondent Corporation has changed the mind after receiving No Due Certificate from the petitioner by letter dated 22.12.87. The petitioner after producing the No Due Certificate to the respondent Corporation requested to the Respondent Corporation that kindly now allot the said plot in favour of the petitioner company. The said letter has been received by the Respondent Corporation and informed to the petitioner that the details in this regard has been called from our Regional Officer and we will let you know in the matter as soon as decision is arrived. The said letter is dated 28.12.87 of the Respondent Corporation. It is also pertinent to note that on 21.12.88 Shri B.V.Patel, Director has addressed a letter to the Dy. Chief Executive (M & B) of GIDC in response to the letter dated 28.12.87 of GIDC and informed that now all the requirements have been complied by the petitioner company and almost 4 year old case with a request to issue allotment letter for plot no.1/12 at GIDC Kalol in favour of Schutz Engineers Pvt.Ltd without any further delay. Thereafter the impugned order dated 30/31.5.88 has been passed by the Respondent Corporation against the petitioner. The said order dated 30/31.5.88 has been passed by the Respondent Corporation without giving any particular to the petitioner company. In the said order it is now mentioned by the Corporation that the said plot no.1/12 was offered by letter dated 15.2.84 and amount

has been paid on 30.3.84 and request was made by the petitioner that the allotment be finalised in favour of the petitioner company and normally the Corporation does not allow such change during the offer allotment and subject matter was referred to the Head Office and Head Office has informed that considering the request of the petitioner company for allotment in the name of Schutz Engineers Pvt.Ltd. on the following terms and conditions. The conditions are as under:-

- "1. You shall have to pay transfer fee at the rate of 10% of the current allotment price for Plot No.1/12. The plot area is 4010-26 sq.mtrs. Accordingly, the transfer fee at the current allotment price Rs.75/- worked out to Rs.37,596/which may please be arranged to pay by demand draft.
2. Since this is a case of allotment for expansion of your existing industrial unit, please arrange to send us a certificate about status of utilisation in respect of your existing unit/s at Kalol Industrial Estate from our Dy. Ex. Engineer, GIDC, Kalol. Kindly also arrange to make available to us a certificate from him stating that no unauthorised construction is done in the existing unit/s.
3. You shall have to produce "No Dues Certificate" in respect of your existing unit/s.
4. You shall have to submit to us a copy of "No Objection Certificate" from GPCB for your present project.
5. The offer was made to you on 15.2.1984. Accordingly the allotment is finalised retrospectively, i.e. from 15.3.1984 and you shall have to pay the dues in respect of plot no.1/12 as per the attached schedule. Accordingly, you shall have to clear the dues, after which the allotment letter will be issued to you of plot no.1/12 at Kalol.
6. You shall also make available to us a provisional SSI Registration Number in the name of M/s. Schutz Engineers Pvt.Ltd. for the said unit.
7. You shall also make available to us a copy of Memorandum & Articles of Association not only for M/s. Schutz Engineers Pvt.Ltd, but also for M/s.

8. You shall also arrange to pay the amount of penalty for non-utilisation of plot No. 1/12. penalty @ 2% for non-utilisation of plot No.1/12 will have to be paid which comes to Rs.7519, after which you shall be allowed to utilise this plot before 15.3.1989."

8. After reading the said conditions which has been imposed by the Respondent Corporation it is first time the respondent Corporation has come out with the case that the said change is accepted by the Head Office with some conditions for issuing the allotment letter in favour of the petitioner Corporation. Prior to that the respondent Corporation has never informed to the petitioner company or to Shri BV Patel that if they want to change the name from individual to name of company then they have to pay transfer fee and penalty to the Respondent Corporation. So it is for the first time the respondent Corporation has decided to allot the said plot in favour of the petitioner company provided they satisfied the condition no. 1 to 5. Such order is passed by the Respondent Corporation who is the Authority without giving any opportunity to the petitioner. When the respondent Corporation has accepted the amount from the petitioner company on 30.3.84 and also issued a receipt in the name of the petitioner company dated 5.4.84 and upto that date no objection has been raised by the Respondent Corporation against the petitioner company it presumed that the change which has been effected by Shri B.V.Patel has been accepted by the Respondent Corporation by accepting the amount from the petitioner company and issuing receipt in favour of the petitioner company. It is not a all of sudden change demanded by the petitioner company but by letter dated 30.3.84 Annexure F Page 24, these facts have been brought to the notice of the respondent Corporation by Shri B.V.Patel, Managing Director. There was no any letter produced by the respondent Corporation throughout on record that this letter and subsequent correspondence has been objected at any point of time by the respondent Corporation that they will not accept the same which is suggested by the petitioner in letter dated 30.3.84. It is first time the respondent Corporation has passed an order on 30/31.5.88 to allot the plot in question in the name of the petitioner company provided the petitioner company is prepared to satisfy the condition no.1 to 5 as narrated in the said order. Therefore the presumption is that the respondent Corporation was aware from very beginning and it was made aware by the petitioner to the Respondent

Corporation that the said allotment of Plot 1/12 is in favour of the petitioner company but said allotment has not been finalised because of the fact that No Due Certificate has not been produced by the petitioner company upto 22.12.1987. Otherwise, there is no other condition for allotment as per letter dated 14/15.2.84. The only condition is required to be satisfied is to produce a No Due Certificate from the Audit Officer in reply to the existing plot. Therefore prima facie, the said order dated 30/31.5.88 is arbitrary and against the principles of natural justice and it is also contrary to the correspondence which has been made with the petitioner company and respondent Corporation. The petitioner company has submitted the reply to the said impugned order Annexure T Page 84 wherein a detailed reply has been given by the petitioner company and raised contention that they are not agreeable to pay transfer fee as request was made by the petitioner company to issue the allotment letter in the name of the petitioner company and in respect to the change of the Corporation Policy effected by Circular dated 30.10.85 whereas payment in respect of particular plot has been made on 5.4.1984 and therefore such policy cannot be now implemented in respect to the earlier transaction arrived between the petitioner and respondent Corporation. It is also pointed out by the petitioner company that the amount has been collected by the Respondent Corporation from petitioner company and receipt has been also issued in the name of the petitioner company and upto that date no objection has been raised by the respondent Corporation and therefore petitioner company is not liable to pay any transfer fee and even penalty for non-utilisation of plot because the plot has not been handed over to the petitioner company upto the date of the impugned order passed by the Respondent Corporation.

9. Considering this aspect of the matter, the Respondent Corporation apparently acted in arbitrary manner because the amount of 20% has been accepted by the Respondent Corporation from the petitioner company and receipt has been also issued by the respondent Corporation in favour of the petitioner company meaning thereby the change which was demanded by Shri B.V.Patel in various letters has been accepted by the Respondent Corporation. The letter dated 30.3.84 is very clear wherein Shri B.V.Patel has requested to the Respondent Corporation to accept the amount of 20% from the petitioner company and to issue the allotment letter in favour of the petitioner company. The said letter dated 30.3.84 of Shri B.V.Patel was never objected by the Respondent Corporation till the impugned order dated

30/31.5.88 has been passed. In affidavit in reply also, such correspondence which has been produced on record was not objected by the Respondent Corporation and not denied the averments made in the petition. The only contention which has been raised by the Respondent Corporation that initially the plot was demanded in the name of individual and same was allotted by the respondent Corporation in the name of Individual and subsequently no change is allowed without paying transfer fee. The facts in the present case is otherwise because initially plot has been issued no doubt in favour of individual but vide letter dated 30.3.84 the very same individual has requested to the respondent Corporation to accept 20% amount from the company wherein the very individual is a Managing Director and also requested to issue a allotment letter in favour of the petitioner company and said letter has not been objected by the respondent Corporation no denial has been produced on record by the respondent Corporation and not only that but request pointed out in the said letter dated 30.3.84 has been accepted by the Respondent corporation by way of issuing a receipt dated 5.4.84 in the name of the petitioner company. Therefore, subsequently, the respondent Corporation has accepted the change made way back in 1984. Now after 4 years period when petitioner company has produced a No Due Certificate on 22.12.1987 cannot be entitled to ask for transfer fee and penalty for non-utilisation of the plot from the petitioner company. Once the respondent Corporation has accepted the request from individual to issue allotment letter in favour of the petitioner company and accept amount from the petitioner company and said request has been accepted by the Respondent Corporation and issued a receipt in favour of the petitioner company. Then subsequently all of a sudden change by the said authority is not proper and not legal and valid. The penalty for non-utilisation of the plot is apparently illegal because upto the date of order in question dated 30/31.5.88 the said plot is not allotted to either individual or petitioner company, merely allotment letter has been issued in favour of the individual Shri B.V.Patel but the plot in fact is actually not handed over to either the individual or in favour of the petitioner company. Therefore the question of non-utilisation of the plot does not arise and the penalty for that is totally perverse and amounts to non-application of mind. Therefore, according to the respondent Corporation that the policy has been changed w.e.f. 30.10.1985 as pointed out in Page 107 Annexure 2 to the reply but said policy has been changed w.e.f. 30.10.85 same cannot be made applicable with retrospective effect to the present case wherein the amount of 20% has been paid by letter dated

30.3.84 and accepted by the Respondent Corporation on 5.4.1984. Therefore such policy cannot have retrospective effect to the transfer which already concluded prior to the effect of the policy. Therefore, even according to that contention the said policy which has been changed w.e.f. 30.10.1985 cannot be made applicable to the earlier transaction which was concluded between the parties.

10. Therefore, according to my opinion, the impugned order dated 30/31.5.88 is illegal, null and void and also contrary to the principles of natural justice and also contrary to the Policy of the Respondent Corporation & therefore the same is hereby quashed and set aside and result thereto is that the petitioner is entitled to allotment of Plot No.1/12 of GIDC Estate, Kalol as the petitioner has already complied with all the requirements which has been raised by the respondent Corporation.

11. In the result, the impugned order dated 30/31.5.88 Annexure S to the petition is quashed and set aside and it is declared that the petitioner company is entitled to allotment of Plot No.1/12 of GIDC Estate Kalol since the petitioner has already complied with all requirements which were raised by the respondent Corporation. Accordingly rules is made absolute and looking to the facts and circumstances of the case, there shall be no orders as to costs.

jitu